

## **EXHIBIT 6**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

SCOTT WEAVER, individually                      Case No.  
and on behalf of all others                      2:18-cv-01996-JPS  
similarly situated

vs

CHAMPION PETFOODS USA,  
INC., and CHAMPION  
PETFOODS, LP

Friday, September 20th, 2019

Videotaped Deposition of LORIN HITT,

was taken pursuant to Notice at the law offices of  
GREENBERG TRAURIG, LLP, 1717 Arch Street, Suite 400,  
Philadelphia, PA 19103, on the above date before  
DEBRA G. JOHNSON-SPALLONE, CCR, RPR, Delaware CSR,  
Notary Public in and for the States of Pennsylvania,  
New Jersey, and Delaware, and a Federally Approved  
Reporter of the United States District Court  
commencing on or about 9:05 a.m.

1 APPEARANCES:

2

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23 ALSO PRESENT:

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I N D E X

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TESTIMONY OF:        LORIN HITT

By Ms. Borrelli..... 6

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E X H I B I T S

- - - - -

EXHIBIT		PAGE
NUMBER	DESCRIPTION	MARKED

- - - - -

Hitt-1	Second Rebuttal Expert	
	Report of Lorin M. Hitt,	
	September 12, 2019	7
Hitt-2	Rebuttal Expert Report	
	of Lorin M. Hitt,	
	September 12, 2019	7
Hitt-3	Rebuttal Expert Report	
	of Lorin M. Hitt, May	
	13, 2019	15

1                   -----  
2                   P R O C E E D I N G S  
3                   -----  
4                   (It is stipulated and agreed by and  
5 between counsel that sealing, and certification of  
6 the within deposition be waived; and that all  
7 objections, except as to the form of the question,  
8 be reserved until the time of trial.)  
9                   -----  
10                  (The following is held off of the  
11 video record and is recorded on the stenographic  
12 record only.)  
13                  ---  
14                  COURT REPORTER: Will counsel  
15 please state their transcript order on the record.  
16                  MS. BORRELLI: Yes. Just  
17 electronic for now. I need it by Monday. No rough.  
18                  Final electronic on Monday.  
19                  MR. KESSLER: We would take a  
20 draft, if you could do it. No rush, and then we  
21 will do expedited Monday, too.  
22                  VIDEO TECHNICIAN: Everyone stand  
23 by.  
24                  ---  
25                  (The following is recorded on both

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1 the video record and the stenographic record.)  
2                  ---  
3                  VIDEO TECHNICIAN: This is the  
4 videographer speaking, Aleisha Catts, here on behalf  
5 of Depo International.  
6                  Today is September 20th of 2019,  
7 and the time is 9:06 a.m.  
8                  We are at 1717 Arch Street,  
9 Philadelphia, Pennsylvania to take the video  
10 deposition of Lorin Hitt in the matter of Scott  
11 Weaver versus Champion Petfood, USA, Incorporate,  
12 et al.  
13                  Will counsel please introduce  
14 yourself?  
15                  MS. BORRELLI: Raina Borrelli from  
16 Gustafson Gluek on behalf of the Plaintiffs.  
17                  MR. KESSLER: Jared Kessler from  
18 Greenberg Traurig on behalf of the Defendants.  
19                  VIDEO TECHNICIAN: Will the court  
20 reporter please administer the oath.  
21                  ---  
22                  LORIN HITT, after having been first  
23 duly sworn as a witness, testified as follows:  
24                  ---  
25                  ---

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1                   ---  
2                   E X A M I N A T I O N  
3                   ----  
4 BY MS. BORRELLI:  
5                  Q.    Morning, Dr. Hitt.  
6                        We have met before a few months  
7 ago.  
8                  A.    Yes. Good morning.  
9                  Q.    Good morning.  
10                       I know you know the ground rules  
11 for deposition as you have done this a number of  
12 times.  
13                       I will just remind you; ask anytime  
14 you need a break, and let's try not to talk over one  
15 another.  
16                  Okay?  
17                  A.    Okay.  
18                  Q.    All right.  
19                       Anything that would prevent you  
20 from testifying truthfully today?  
21                  A.    No.  
22                  Q.    All right.  
23                       I'm going to start by handing you  
24 what I have marked as Exhibit-1, which is the Second  
25 Rebuttal Expert Report of Lorin M. Hitt in the

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1 Reitman versus Champion case.  
2                  ---  
3                       (At which time a Second Rebuttal  
4 Expert Report of Lorin M. Hitt, September  
5 12, 2019, was received and marked as  
6 Deposition Exhibit Hitt-1 for  
7 identification by the court reporter.)  
8                  ---  
9                  MR. KESSLER: Thank you.  
10                  ---  
11 CONTINUATION  
12 BY MS. BORRELLI:  
13                  Q.    Take a look, and let me know if  
14 that is your signature on page eight of that report.  
15                  A.    Yes.  
16                  Q.    Okay.  
17                       And I'm also going to hand you what  
18 has been marked as Exhibit-2, your Rebuttal Expert  
19 Report of Lorin M. Hitt in Weaver versus Champion  
20 dated September 12, 2019.  
21                  ---  
22                       (At which time a Rebuttal Expert  
23 Report of Lorin M. Hitt, September 12,  
24 2019, was received and marked as Deposition  
25 Exhibit Hitt-2 for identification by the

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<p>1 court reporter.)</p> <p>2 - - -</p> <p>3 CONTINUATION</p> <p>4 BY MS. BORRELLI:</p> <p>5 Q. And do you see your signature on</p> <p>6 page 46 of Exhibit-2?</p> <p>7 A. Yes.</p> <p>8 Q. All right.</p> <p>9 So, these are the two reports we</p> <p>10 are here to discuss today; right?</p> <p>11 A. Okay.</p> <p>12 Q. I will try not to retry old ground</p> <p>13 from your previous report and deposition in Reitman</p> <p>14 unless necessary to clarify anything.</p> <p>15 Okay?</p> <p>16 A. Okay.</p> <p>17 Q. All right.</p> <p>18 So, Exhibit-1 is your second</p> <p>19 rebuttal expert report in the Reitman case.</p> <p>20 Is it fair to characterize your</p> <p>21 opinions in this report as limited to Dr. Krosnick's</p> <p>22 second survey regarding Pentobarbital in Mr. Weir's</p> <p>23 supplemental report?</p> <p>24 A. I think that's right. It was</p> <p>25 intended to rebut those directly, and did not, as</p> <p style="text-align: right;">Page 8</p>	<p>1 There are some analysis that was in</p> <p>2 his original survey which was not in the previous</p> <p>3 report, and then there is the Pentobarbital</p> <p>4 discussion as well, which is somewhere between the</p> <p>5 two, and I believe that's it.</p> <p>6 Q. In Exhibit-2, your rebuttal report,</p> <p>7 are you offering any new or different opinions</p> <p>8 regarding Mr. Weir's report --</p> <p>9 A. So --</p> <p>10 Q. -- obviously understanding the</p> <p>11 numbers are different?</p> <p>12 A. So, the numbers are different.</p> <p>13 There is -- there is a little bit</p> <p>14 more discussion on some of the existing points that</p> <p>15 wasn't there before, but there's -- I don't think</p> <p>16 there's any fundamentally new opinions, other than,</p> <p>17 you know, additional new discussion and analysis of</p> <p>18 his new -- of his new materials.</p> <p>19 Q. Between your report in Weaver, and</p> <p>20 your second rebuttal report in Reitman, Exhibit 1,</p> <p>21 are there any different opinions about</p> <p>22 Dr. Krosnick's Pentobarbital survey and report in</p> <p>23 these two reports?</p> <p>24 A. No.</p> <p>25 Q. Since the time that you offered</p> <p style="text-align: right;">Page 10</p>
<p>1 far as I know, introduce anything new.</p> <p>2 Q. All right.</p> <p>3 So, you're not offering any new</p> <p>4 opinions in your second rebuttal report, Exhibit-1,</p> <p>5 regarding Dr. Krosnick's first survey and first</p> <p>6 report in terms of the diminution in value survey?</p> <p>7 A. That's correct.</p> <p>8 Q. And you're not offering any new or</p> <p>9 different opinions about Mr. Weir's initial report</p> <p>10 in Reitman.</p> <p>11 Is that right?</p> <p>12 A. I think, generally, that's right.</p> <p>13 Q. Okay.</p> <p>14 I guess with the understanding of</p> <p>15 what you say about his supplemental report, right,</p> <p>16 tangentially implicates that first report?</p> <p>17 A. Yeah. That's the extent of it.</p> <p>18 Q. And then in Exhibit-2, which is</p> <p>19 your report in the Weaver case, are you offering any</p> <p>20 new opinions in that report regarding Dr. Krosnick's</p> <p>21 first survey and first report?</p> <p>22 A. So, I would not say it's a new</p> <p>23 opinion. There is definitely some new analysis that</p> <p>24 supports the existing opinions, and so, that's in</p> <p>25 there.</p> <p style="text-align: right;">Page 9</p>	<p>1 your opinions in Reitman, which I believe was</p> <p>2 May 13, 2019 --</p> <p>3 Does that sound right?</p> <p>4 A. Yes. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. That's correct.</p> <p>7 Q. Okay.</p> <p>8 A. That's right.</p> <p>9 Q. -- have you reviewed any additional</p> <p>10 documents to support your opinions in Exhibits-1 and</p> <p>11 2?</p> <p>12 A. So -- so, yes. In most cases it is</p> <p>13 reviewing just newer versions of things that already</p> <p>14 existed in the Weir report, the Krosnick report, the</p> <p>15 new Complaints.</p> <p>16 In terms of additional information,</p> <p>17 there is -- in the Weaver report some of the sources</p> <p>18 had to change because they are no longer available,</p> <p>19 and so, those were updated as well.</p> <p>20 So, that I don't know if I --</p> <p>21 they're Websites. I don't know if I consider them</p> <p>22 documents, but they're -- that was something else</p> <p>23 that is also new.</p> <p>24 Q. And when you say "sources had to</p> <p>25 change," you mentioned Websites, do you mean, like,</p> <p style="text-align: right;">Page 11</p>

<p>1 you Goggled something and that Website no longer 2 existed? 3 <b>A. Yes. It was -- yeah, it was</b> 4 <b>regarding the prices.</b> 5 Q. Okay. 6 <b>A. So, some of the sources we used for</b> 7 <b>the prices no longer had the prices for those</b> 8 <b>products available. So, those were updated.</b> 9 <b>But I think -- I think that is the</b> 10 <b>extent of it. It is just simply updating -- it</b> 11 <b>updating the document references, and, you know, the</b> 12 <b>reports, the other case material, and so forth to</b> 13 <b>the current state in the case.</b> 14 Q. Did you receive any additional 15 documents from Champion that you reviewed related to 16 your opinions in Exhibits-1 and 2? 17 <b>A. I don't think so.</b> 18 Q. Between the time of your first 19 report in May of 2018, and today, did you review any 20 additional deposition testimony in this case, and by 21 that I mean, Weaver or Reitman? 22 (Pause) 23 <b>A. I don't believe so.</b> 24 Q. Between May 13 of 2019, and today, 25 did you speak with anyone at Champion about this</p> <p style="text-align: right;">Page 12</p>	<p>1 case? 2 <b>A. It would have been in the</b> 3 <b>July/August timeframe this year. I think the first</b> 4 <b>work was in August, but I think I had been made</b> 5 <b>aware of it. Things were coming in probably about a</b> 6 <b>month before. I don't know exactly when, though.</b> 7 Q. Was your assignment in the Weaver 8 case the same as your assignment in the Reitman 9 case? 10 <b>A. My understanding that it was</b> 11 <b>basically the same.</b> 12 Q. Did anyone deliver the work that 13 you could do in the Weaver case to support your 14 case? 15 <b>A. No.</b> 16 Q. Did you ask for anything in the 17 Weaver case to support your opinions that was not 18 given to you? 19 <b>A. So, there was -- I revisited the</b> 20 <b>question of whether or not there is any retail</b> 21 <b>pricing information available.</b> 22 <b>My understanding is, it continues</b> 23 <b>to not be available. So, that was the one document</b> 24 <b>request I had, and there was nothing to be used.</b> 25 <b>So, that was the only one.</b></p> <p style="text-align: right;">Page 14</p>
<p>1 case, either by phone or in writing? 2 <b>A. I didn't speak with anybody</b> 3 <b>directly at Champion.</b> 4 Q. Did you have any staff assisting 5 you with researching and drafting your reports 6 Exhibits-1 and 2? 7 <b>A. Yes.</b> 8 Q. And where -- who employs those 9 staff? 10 <b>A. They are employed by Cornerstone</b> 11 <b>Research.</b> 12 Q. Do you know whether anyone at 13 Cornerstone Research that you worked with spoke or 14 communicated with anyone at Champion during the time 15 of your first report, and these reports? 16 <b>A. I don't know.</b> 17 (Pause) 18 Q. When were you retained in the 19 Weaver case? 20 <b>A. I don't recall whether there was a</b> 21 <b>formal retention or I just considered it an</b> 22 <b>extension of the existing one.</b> 23 <b>So, I -- I actually don't know.</b> 24 Q. When did you become aware that you 25 were going to issue expert opinions in the Weaver</p> <p style="text-align: right;">Page 13</p>	<p>1 Q. Did your staff or you do any 2 additional research to determine if that retail 3 pricing information was available from a source, 4 other than Champion? 5 <b>A. So, I -- I asked my research staff</b> 6 <b>to explore whether or not there was anything that</b> 7 <b>might be available.</b> 8 <b>I -- I think it was mostly directed</b> 9 <b>at Champion, but they -- they may also have done</b> 10 <b>some additional work to see if it was readily</b> 11 <b>available, but there was nothing -- nothing that</b> 12 <b>they were able -- able to obtain.</b> 13 Q. Were any budgetary restrictions 14 placed on you as far as work that you could do in 15 the Weaver case? 16 <b>A. No.</b> 17 Q. So, no one prevented you from doing 18 what you thought was the best work you could do as 19 an expert in the Weaver case? 20 <b>A. That's correct.</b> 21 - - - 22 (At which time a Rebuttal Expert 23 Report of Lorin M. Hitt, May 13, 2019, was 24 received and marked as Deposition Exhibit 25 Hitt-3 for identification by the court</p> <p style="text-align: right;">Page 15</p>

1 reporter.)  
2 - - -  
3 CONTINUATION  
4 BY MS. BORRELLI:  
5 Q. Just for reference, I am going to  
6 hand you Exhibit-3, which is your rebuttal report in  
7 Reitman from May.  
8 Just take a quick look.  
9 Confirm it is what I say it is.  
10 (Pause)  
11 **A. Looks correct.**  
12 Q. All right.  
13 And I will say, it is just the body  
14 of your report. I didn't add any of the exhibits,  
15 attachments, et cetera, or do you have the whole  
16 thing?  
17 **A. I have -- I have a CV as well.**  
18 Q. All right. Excellent.  
19 **A. So -- I think this is the whole**  
20 **thing.**  
21 Q. All right.  
22 I don't have it, so better you.  
23 Okay.  
24 MR. KESSLER: Do you want a copy of  
25 it?

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1 MS. BORRELLI: That's fine.  
2 I don't think I'm going to need it.  
3 - - -  
4 CONTINUATION  
5 BY MS. BORRELLI:  
6 Q. Exhibits-1 and 3, are your two  
7 reports in Reitman.  
8 Do those two reports together  
9 contain all the opinions that you intend to offer in  
10 the Reitman case?  
11 **A. As of this moment, yes.**  
12 **Things could come up today.**  
13 **Things could change, more**  
14 **information, but at the moment, those are my**  
15 **opinions as they stand now.**  
16 Q. Between Exhibits-1 and 3, do they  
17 contain all of the bases and reasoning for those  
18 opinions that you hold in Reitman?  
19 **A. Yes.**  
20 Q. In Exhibit-2, does that contain all  
21 of the opinions that you intend to offer in the  
22 Weaver case?  
23 **A. Sitting here right now, that is**  
24 **yes. You know, again, things can change. New**  
25 **information, rebuttal reports, but at the moment**

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1 **this -- this reflects my opinions as -- as of this**  
2 **time.**  
3 Q. And does Exhibit-2 contain all of  
4 the bases and reasoning for those opinions in  
5 Weaver?  
6 **A. Yes. Excuse me.**  
7 Q. Did you review your deposition  
8 transcripts from May taken -- I think it was May --  
9 taken in the Reitman case?  
10 **A. Yes.**  
11 Q. Beyond anything that you may have  
12 indicated on your errata sheet, do you have anything  
13 to change from that testimony?  
14 **A. Not -- no.**  
15 Q. So, you stand by everything you  
16 said in your deposition that day?  
17 **A. Yes --**  
18 Q. Okay.  
19 **A. -- with -- with the changes to**  
20 **sound a little more correct --**  
21 Q. Yeah.  
22 **A. -- but that was -- that was -- that**  
23 **was, yes.**  
24 Q. What did you do to prepare for your  
25 deposition today?

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1 **A. So, reviewed my older reports.**  
2 **Reviewed the more recent reports.**  
3 **Went through all the documents**  
4 **supporting the new analyses in -- in both Weaver and**  
5 **Reitman.**  
6 **Spoke with my research team.**  
7 **Spoke with counsel.**  
8 Q. What did you discuss with your  
9 research team as far as preparing for today's  
10 deposition?  
11 **A. Most of the discussion was going**  
12 **through the backup materials for the new**  
13 **calculations.**  
14 Q. When you say, "the new  
15 calculations," which calculations are you referring  
16 to?  
17 **A. So, Mr. Weir changed his -- he did**  
18 **not change his methodology in an abstract way, but**  
19 **he changed the way he implemented it to --**  
20 **mechanically he shifted from doing a lot of work in**  
21 **the statistics package to Excel.**  
22 **So, it was going through those**  
23 **materials, as well as the modifications that my**  
24 **research team had put together to -- to do the error**  
25 **corrections of the new -- new issues in Mr. Weir's**

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<p>1 analysis.</p> <p>2 Q. Okay.</p> <p>3 When you say you "spoke with</p> <p>4 counsel," when was that?</p> <p>5 A. I believe counsel was on the phone</p> <p>6 when I spoke with my research team last -- was it</p> <p>7 Friday, and then we had a discussion yesterday.</p> <p>8 Q. Did you review Dr. Hanssens' two</p> <p>9 new reports, one in Reitman and one in Weaver?</p> <p>10 A. Yes.</p> <p>11 Q. And did you review those prior to</p> <p>12 finalizing your reports, Exhibits-1 and 2?</p> <p>13 A. Yes. I believe I had a final or</p> <p>14 near final copy of those that I reviewed before we</p> <p>15 executed the report.</p> <p>16 Q. In your opinions in Exhibits-1 and</p> <p>17 2, do you rely on any of Dr. Hanssens' opinions to</p> <p>18 support your opinions?</p> <p>19 A. Yes, in the same way as before,</p> <p>20 plus he did more -- a deeper dive on the</p> <p>21 Pentobarbital survey. So, I'm aware of those.</p> <p>22 I believe I cited him for those,</p> <p>23 but I relied on him for that extended analysis, but</p> <p>24 mine had more restrictions on that.</p> <p>25 Q. So, where you cite to Dr. Hanssens</p> <p style="text-align: right;">Page 20</p>	<p>1 experts in this case?</p> <p>2 A. No, other than Mr. Weir,</p> <p>3 Dr. Krosnick and Professor Hanssens, that is the</p> <p>4 extent of the reports that I have reviewed.</p> <p>5 Q. Was anything then added to your CV</p> <p>6 since your last deposition in May?</p> <p>7 A. Probably on the margin; teaching.</p> <p>8 I -- I -- I update it continuously. So, without</p> <p>9 doing a Red line, I'm not sure.</p> <p>10 Teaching has been updated.</p> <p>11 There is a new working paper that</p> <p>12 we are circulating around that is -- that is</p> <p>13 definitely on the list.</p> <p>14 Things may have progressed from</p> <p>15 being in press to published, but I don't think there</p> <p>16 is anything else that I recall directly that is</p> <p>17 changed in the last few months.</p> <p>18 Q. Are any of the papers or</p> <p>19 publications that are forthcoming or you're working</p> <p>20 on related to survey design or survey analysis?</p> <p>21 A. Not survey design.</p> <p>22 I don't think so.</p> <p>23 Q. And have you taught any courses</p> <p>24 since May related to survey design or survey</p> <p>25 analysis?</p> <p style="text-align: right;">Page 22</p>
<p>1 in Exhibits-1 and 2, is it fair to assume that those</p> <p>2 are the areas in which you rely on his opinions?</p> <p>3 A. Yes, that's correct.</p> <p>4 Q. Did you agree with all of</p> <p>5 Dr. Hanssens' opinions in his two new reports; one</p> <p>6 issued in Reitman and one issued in Weaver?</p> <p>7 A. I -- I did not read them with a --</p> <p>8 with an eye towards whether I agree or disagree.</p> <p>9 I -- my understanding is, I agree</p> <p>10 with the points which I referenced, and it appears</p> <p>11 broadly consistent with my understanding. But,</p> <p>12 again, I didn't do any kind of line-by-line</p> <p>13 analysis, other than the specific -- the specific</p> <p>14 items that I -- I cited.</p> <p>15 Q. Did you review any other expert</p> <p>16 reports issued since your May report to form your</p> <p>17 opinions in Exhibits-1 and 2, either from the</p> <p>18 Plaintiffs or from the Defendants?</p> <p>19 A. So, the -- I think Weir has -- has</p> <p>20 a rebuttal report which I am responding to, and I</p> <p>21 also reviewed the -- the new Weaver and Krosnick</p> <p>22 reports, the extended Krosnick report, and the new</p> <p>23 Weaver report in -- in preparation for these.</p> <p>24 Q. So, you don't recall reviewing any</p> <p>25 of the reports from what I will call the liability</p> <p style="text-align: right;">Page 21</p>	<p>1 A. It would have been the same as --</p> <p>2 as before. I am teaching my analytics class now.</p> <p>3 Q. Okay.</p> <p>4 A. But that's the only thing that</p> <p>5 would have changed.</p> <p>6 Q. Has any -- have any cases been</p> <p>7 added to your list of items since May of 2019?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 Which cases are those?</p> <p>11 A. They will be on the back page, and</p> <p>12 there should be two. One is Dolby, and one is</p> <p>13 HedgeServ. HedgeServ is support -- reporting</p> <p>14 depositions.</p> <p>15 Q. Can you tell me what the HedgeServ</p> <p>16 case is about?</p> <p>17 A. That's pending, so a lot of that is</p> <p>18 confidential. It is a contract dispute between a</p> <p>19 software vendor and a district software distributor.</p> <p>20 Q. Obviously not asking you to violate</p> <p>21 any Protective Orders.</p> <p>22 Are you able to tell me at all what</p> <p>23 sorts of opinions you are offering in that case or</p> <p>24 generally --</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 23</p>

<p>1 Q. -- what you have been asked to do?</p> <p>2 <b>A. I can -- it's generally in the</b></p> <p>3 <b>realm of pricing. It is -- it is a dispute over</b></p> <p>4 <b>pricing.</b></p> <p>5 Q. And what is the Dolby case about?</p> <p>6 <b>A. That is a dispute over an</b></p> <p>7 <b>intellectual property licensing agreement.</b></p> <p>8 Q. Again, without violating any</p> <p>9 Protective Orders, can you tell me, generally, what</p> <p>10 -- what your assignment is in that case?</p> <p>11 <b>A. It is addressing economics and</b></p> <p>12 <b>pricing, and there are some business practice issues</b></p> <p>13 <b>regarding sort of common practices in the software</b></p> <p>14 <b>industry.</b></p> <p>15 Q. So, is it fair to say that neither</p> <p>16 of those cases involve you providing any opinions</p> <p>17 about survey evidence or analysis?</p> <p>18 <b>A. Yes, I believe that is correct.</b></p> <p>19 Q. Okay.</p> <p>20 And since we last spoke in May,</p> <p>21 have you designed any surveys?</p> <p>22 <b>A. Nothing finished.</b></p> <p>23 <b>We are beginning to work on some</b></p> <p>24 <b>updates to one of my previous papers. It is in</b></p> <p>25 <b>preliminary stages right now.</b></p> <p style="text-align: right;">Page 24</p>	<p>1 says you were asked by counsel for Champion to</p> <p>2 review and respond to the Weir Supplemental Report</p> <p>3 and the Second Krosnick Report.</p> <p>4 Can you be a little more specific</p> <p>5 about what your assignment was with respect to those</p> <p>6 two reports?</p> <p>7 <b>A. I think that actually captures it</b></p> <p>8 <b>pretty well, which is to review these, and see if I</b></p> <p>9 <b>have any, either additional opinions that would be</b></p> <p>10 <b>related to those reports, or if I had any issues</b></p> <p>11 <b>with the information that was presented in those</b></p> <p>12 <b>reports.</b></p> <p>13 <b>So, it was intended to focus</b></p> <p>14 <b>specifically on those, and the -- the changes</b></p> <p>15 <b>relative to the previous ones.</b></p> <p>16 Q. Okay.</p> <p>17 So, there was no limitation put on</p> <p>18 you to look at the economic issues in those two</p> <p>19 reports. It was just, "look at those reports and</p> <p>20 let us know what you think"?</p> <p>21 <b>A. It was within the same scope of the</b></p> <p>22 <b>questions I was asked before, yeah. Focus on the</b></p> <p>23 <b>economic issues, and to the extent it feeds into the</b></p> <p>24 <b>opinions about market prices, and -- and the same --</b></p> <p>25 <b>it's basically the same assignment as I had in the</b></p> <p style="text-align: right;">Page 26</p>
<p>1 Q. What sort of survey is that that</p> <p>2 you are working on?</p> <p>3 <b>A. It will -- I think we discussed</b></p> <p>4 <b>these before. It is a -- it is a work practices</b></p> <p>5 <b>survey regarding a business practice in nursing</b></p> <p>6 <b>homes.</b></p> <p>7 Q. I do recall that.</p> <p>8 So, not related to consumer</p> <p>9 products?</p> <p>10 <b>A. It is -- it is not -- well, it is a</b></p> <p>11 <b>-- no, this one is not consumer products.</b></p> <p>12 Q. All right.</p> <p>13 <b>A. This one is really business</b></p> <p>14 <b>practices.</b></p> <p>15 <b>Some of the ones in there were</b></p> <p>16 <b>commercial products, but this is -- this is neither.</b></p> <p>17 Q. Okay.</p> <p>18 Can you grab Exhibit-1, which is</p> <p>19 your report -- your second rebuttal report in</p> <p>20 Reitman.</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. And in paragraph one, page one,</p> <p>23 this is under the heading "Background and</p> <p>24 Assignment."</p> <p>25 The last sentence in paragraph one</p> <p style="text-align: right;">Page 25</p>	<p>1 <b>previous report focused on these two supplements.</b></p> <p>2 Q. Your first opinion in this report</p> <p>3 is on page two, starting in paragraph nine.</p> <p>4 You say that Dr. Krosnick's</p> <p>5 Pentobarbital Survey does not support Mr. Weir's</p> <p>6 estimation of damages.</p> <p>7 Is -- is it fair to characterize</p> <p>8 this opinion as just saying that the Pentobarbital</p> <p>9 Survey was not used by Weir to calculate the illegal</p> <p>10 sales damages?</p> <p>11 <b>A. I think that's one of two things I</b></p> <p>12 <b>would say.</b></p> <p>13 <b>One; he doesn't actually use it,</b></p> <p>14 <b>and two; because it doesn't address willingness to</b></p> <p>15 <b>pay or pricing or anything that would lead to a</b></p> <p>16 <b>quantification of damages, I don't think he could</b></p> <p>17 <b>have used it for his calculations. And so, that is</b></p> <p>18 <b>-- that's the second opinion, but that's -- that's</b></p> <p>19 <b>the scope of it.</b></p> <p>20 Q. Okay. So, I just want to make sure</p> <p>21 I am clear.</p> <p>22 Your two opinions here are; number</p> <p>23 one; Mr. Weir doesn't use the Pentobarbital Survey</p> <p>24 at all in his legal sales damages calculation.</p> <p>25 Is that right?</p> <p style="text-align: right;">Page 27</p>

1 **A. That's correct.**  
2 Q. And number two is that; regardless  
3 of that fact, Mr. Weir -- I'm sorry -- that the  
4 Pentobarbital Survey doesn't address willingness to  
5 pay or diminution of value, thus it cannot be a used  
6 to determine damages anyway?  
7 **A. At least within the framework**  
8 **Mr. Weir is using it, that is -- that is fair.**  
9 Q. All right.  
10 What is your understanding of the  
11 Plaintiff's claims regarding Pentobarbital in the  
12 both Reitman and Weaver --  
13 **A. So -- so, my general -- well, I --**  
14 **I --**  
15 Q. -- at least as far as damages?  
16 **A. As far as damages, I -- I think my**  
17 **understanding is -- is broadly that; Mr. Weir**  
18 **basically contends that the sales were illegal, and,**  
19 **therefore, the -- it would be that his -- his**  
20 **damages model is based on the total refund of all**  
21 **sales of those products that could be allegedly**  
22 **contaminated.**  
23 **That is pretty much my**  
24 **understanding.**  
25 Q. If we accept that period of

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1 liability as true, and let's say that Plaintiff's  
2 prove that, is it your opinion that Plaintiff's  
3 would still need a survey showing willingness to pay  
4 just for back damages period --  
5 MR. KESSLER: Object to the form.  
6 THE WITNESS: So, if -- if,  
7 ultimately, the calculations says all of the -- it  
8 only requires these sales, doesn't require  
9 diminution of value, then you don't need that survey  
10 input into it. But then, he also doesn't use it for  
11 what he does do.  
12 So, I don't see the connection  
13 between that survey and the actual damages  
14 calculation even when he did do it.  
15 - - -  
16 CONTINUATION  
17 BY MS. BORRELLI:  
18 Q. Okay. So, I just want to make sure  
19 I understand.  
20 You would agree that if Plaintiff's  
21 showed that had those -- the sales of those products  
22 that may have been contaminated with Pentobarbital  
23 were illegal, then Plaintiffs would not need a  
24 willingness-to-pay type survey to support those  
25 damages?

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1 MR. KESSLER: Object to form.  
2 I think you're asking for a legal  
3 conclusion.  
4 THE WITNESS: Yeah.  
5 So -- so -- so what I can say is --  
6 is; given the way Mr. Weir has done the calculation  
7 and what his -- his -- his claim of the appropriate  
8 rate to compute damages is, he does not require  
9 willingness to pay on that because he's got a full  
10 refund.  
11 I didn't do an evaluation as to  
12 whether or not a different methodology would  
13 actually be appropriate, but certainly if  
14 conditional on using his method, it doesn't require  
15 diminution of value.  
16 (Pause)  
17 THE WITNESS: And when I mean "his  
18 method," I mean the illegal sales damage. Not  
19 supporting him, the method he used for the other  
20 statements.  
21 - - -  
22 CONTINUATION  
23 BY MS. BORRELLI:  
24 Q. And your second opinion in  
25 Exhibit-1 is that, Mr. Weir's corrections to his

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1 damages measures do not address most of the  
2 criticisms in your initial report, and, therefore,  
3 his damages calculation remains unreliable.  
4 Is that right?  
5 **A. I -- I think that's right.**  
6 **But the only thing I would modify**  
7 **slightly is that, it is not so much a calculation**  
8 **issue as a separate, you know, the implementation**  
9 **calculation part from the conceptual part, but I**  
10 **disagree with the conceptual framing of his**  
11 **analysis, and that's most -- I don't think he**  
12 **responded to any of those issues.**  
13 **The calculation issue he**  
14 **addressed -- he addressed some of those.**  
15 Q. Okay.  
16 So, is his opinion, basically,  
17 saying that Mr. Weir's supplemental report just  
18 addresses the calculation errors, but none of your  
19 other criticisms of his general methodology?  
20 MR. KESSLER: Form.  
21 THE WITNESS: I think that is  
22 actually -- let me just hear that again, make sure I  
23 --  
24 - - -  
25 (At which time the following

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<p>1 question; "So, is his opinion, basically, saying</p> <p>2 that Mr. Weir's supplemental report just addresses</p> <p>3 the calculation errors, but none of your other</p> <p>4 criticisms of his general methodology?" was read</p> <p>5 back by the court reporter.)</p> <p>6 - - -</p> <p>7 THE WITNESS: Yeah, I -- I think</p> <p>8 that's -- that's -- probably correct. He -- he</p> <p>9 fixed those things. He didn't address all the</p> <p>10 issues about market prices and market -- and, you</p> <p>11 know, willingness to pay that we -- I raised in the</p> <p>12 previous report.</p> <p>13 - - -</p> <p>14 CONTINUATION</p> <p>15 BY MS. BORRELLI:</p> <p>16 Q. Okay.</p> <p>17 And is the basis for this opinion</p> <p>18 just the fact that Mr. Weir's supplemental report</p> <p>19 just addresses calculation errors or is there</p> <p>20 anything beyond that?</p> <p>21 <b>A. It's -- it's based on my read of</b></p> <p>22 <b>his report, and that it's focused on fixing the</b></p> <p>23 <b>calculation, yes.</b></p> <p>24 Q. And then continuing on page three</p> <p>25 of your second rebuttal report, you say that</p> <p style="text-align: right;">Page 32</p>	<p>1 (Pause)</p> <p>2 Q. Okay.</p> <p>3 Then in Paragraph 15, you say for</p> <p>4 certain products Mr. Weir applies an incorrect</p> <p>5 package price.</p> <p>6 If that error was corrected, would</p> <p>7 you agree that Mr. Weir's math was right according</p> <p>8 to his methodology after also correcting the time</p> <p>9 period issue?</p> <p>10 MR. KESSLER: Object to form.</p> <p>11 THE WITNESS: If -- if he -- if he</p> <p>12 corrected -- yeah, if he corrected, you know, the --</p> <p>13 the various, what I am calling -- referring to as,</p> <p>14 you know, errors in tabu -- tabulating total sales,</p> <p>15 then he would have given his data and his</p> <p>16 methodology would have implemented that consistently</p> <p>17 with what he described.</p> <p>18 I'm not saying that's the correct</p> <p>19 methodology, but certainly the mathematical</p> <p>20 calculation based on his methodology would be</p> <p>21 correct.</p> <p>22 - - -</p> <p>23 CONTINUATION</p> <p>24 BY MS. BORRELLI:</p> <p>25 Q. And is that reflected in Table 1 on</p> <p style="text-align: right;">Page 34</p>
<p>1 Mr. Weir still has errors in calculating total</p> <p>2 sales.</p> <p>3 Do you see that?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. If Mr. Weir were to correct his</p> <p>6 calculations to only include sales from the time</p> <p>7 period identified in Plaintiffs' class definition,</p> <p>8 would you agree that those sales calculations are</p> <p>9 accurate --</p> <p>10 MR. KESSLER: Object to form.</p> <p>11 MS. BORRELLI: -- notwithstanding</p> <p>12 the second portion about the package prices?</p> <p>13 MR. KESSLER: Object to the form.</p> <p>14 THE WITNESS: So -- so, I would not</p> <p>15 say accurate. They're consistent with the</p> <p>16 methodology he lays out, and the data he uses.</p> <p>17 I can't vouch for accuracy either</p> <p>18 of the source data or the general approach, but</p> <p>19 certainly he would have taken the data he used, and</p> <p>20 followed the method as he described it.</p> <p>21 - - -</p> <p>22 CONTINUATION</p> <p>23 BY MS. BORRELLI:</p> <p>24 Q. So, the math would be right?</p> <p>25 <b>A. The math would be right.</b></p> <p style="text-align: right;">Page 33</p>	<p>1 page five of Exhibit-1?</p> <p>2 You have calculations as shown in</p> <p>3 what was and then corrected for errors with the</p> <p>4 total of 61.29 million.</p> <p>5 <b>A. Yes. That's the total -- or that's</b></p> <p>6 <b>the amount, I believe, he should have gotten had he</b></p> <p>7 <b>corrected the -- the -- what I'm referring to as the</b></p> <p>8 <b>tabulation errors in his analysis.</b></p> <p>9 Q. In your review of Mr. Weir's</p> <p>10 analysis in calculations, were you looking for</p> <p>11 anywhere he may have made calculation errors that</p> <p>12 could have increased the damages number?</p> <p>13 <b>A. So, I was not specifically looking</b></p> <p>14 <b>for errors in either direction.</b></p> <p>15 <b>There were certain classes of</b></p> <p>16 <b>errors I was looking to see if he made, and then in</b></p> <p>17 <b>this particular case, there are ones -- there --</b></p> <p>18 <b>sorry.</b></p> <p>19 <b>Stepping back.</b></p> <p>20 <b>The -- the source of errors in this</b></p> <p>21 <b>analysis was either time period or -- or was</b></p> <p>22 <b>mismatching price to products, and to the extent I</b></p> <p>23 <b>found errors in mismatching products, these could go</b></p> <p>24 <b>in either direction.</b></p> <p>25 <b>In fact, in this one they do.</b></p> <p style="text-align: right;">Page 35</p>

1           **So, we -- you know, my analysis --**  
2 **my analyst team went through and made all those**  
3 **corrections for where we identified prices that were**  
4 **not correctly attached to products.**  
5           **Some of those were positive.**  
6           **Some of those were negative.**  
7       Q.   Did you identify those ones that  
8 are positive in your report?  
9       A.   **Yes. They're -- they're mentioned**  
10 **in the Footnote 2 of Table 1.**  
11       Q.   I'm sorry.  
12           Can you show me where?  
13           I'm not seeing where you say you  
14 identified incorrect product price that increased  
15 damages.  
16       A.   **So, it is -- it is -- it doesn't**  
17 **say which ones increase and which ones did not**  
18 **increase.**  
19           **So, let me just go through it**  
20 **line-by-line, and I will find the ones.**  
21           (Pause)  
22       A.   **Oh, okay. That -- that did not**  
23 **apply here. I don't think --**  
24           (Pause)  
25       A.   **Let me make sure.**

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1           **I may be mixing up the two reports.**  
2           (Pause)  
3       A.   **Let me just check something real**  
4 **quick. Let me just see if I am recalling them**  
5 **correctly.**  
6           (Pause)  
7       A.   **So, that -- the methodology I**  
8 **described is correct.**  
9           **Whether or not that applied to both**  
10 **reports, I have to check that.**  
11           (Pause)  
12       A.   **Oh, okay. Yes. Sorry.**  
13           **I misspoke on that.**  
14           **The statements I made about**  
15 **methodology are correct.**  
16           **In terms of Reitman, those**  
17 **corrections are all in one direction.**  
18           **In the Weaver report there is a**  
19 **correction in the opposite direction.**  
20       Q.   Okay.  
21           In yours and your team's analysis  
22 of Dr. -- I'm sorry -- Mr. Weir's calculations, did  
23 you identify any errors at all that would have  
24 increased damages in Reitman?  
25       MR. KESSLER: Object to form.

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1           THE WITNESS: I don't believe we  
2 identified any that would have increased damages in  
3 that one.  
4           We focused principally on pricing  
5 ones, and in that one all went one direction. But  
6 in the other case, went both directions.  
7           ---  
8 CONTINUATION  
9 BY MS. BORRELLI:  
10       Q.   So, if you had, for instance, any  
11 errors that would increase damages, would you have  
12 identified those in your report?  
13       MR. KESSLER: Same objection.  
14       THE WITNESS: To the extent they --  
15 they were -- we found errors in the -- in the things  
16 we reviewed, again, we did not attempt to replicate  
17 it completely.  
18       We focused on the areas where we  
19 thought there might be potential error. So, we  
20 would have corrected them in both directions if we  
21 found them.  
22       ---  
23 CONTINUATION  
24 BY MS. BORRELLI:  
25       Q.   So, what areas were you focusing

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1 on?  
2       A.   **Price matching.**  
3           **That's the main one where there is**  
4 **a potential, because the source data is what it is.**  
5           **There's an issue about proper**  
6 **matching of prices. That's where there's a lot of**  
7 **potential for problems.**  
8       Q.   Is that because there's some  
9 ambiguity in the data as far as product names?  
10       A.   **I think that's part of it.**  
11       Q.   And in your view is some of that  
12 open to interpretation, the data?  
13       A.   **So -- so, let me separate it in two**  
14 **pieces.**  
15           **There were judgment -- one; there**  
16 **is -- there are judgment calls to be made.**  
17           **But two; there is a methodology**  
18 **that Mr. Weir articulated for making those judgment**  
19 **calls. And so, in some cases he is inconsistent**  
20 **with that methodology.**  
21           **So, there is ambiguity but there's**  
22 **also inconsistencies, and those are -- are ones I**  
23 **identified.**  
24       Q.   Did you reach out to anyone at  
25 Champion, by either you or your research team, where

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<p>1 you had questions about which products matched with</p> <p>2 which parts of the data?</p> <p>3 <b>A. I don't know of any instances where</b></p> <p>4 <b>that was the case, but I -- I -- I don't know for</b></p> <p>5 <b>certain.</b></p> <p>6 Q. Okay.</p> <p>7 And with respect to the illegal</p> <p>8 sales damages, you have similar opinions, correct,</p> <p>9 with respect to the time period and the market</p> <p>10 pricing.</p> <p>11 Is that right?</p> <p>12 <b>A. Yes, they are -- they are basically</b></p> <p>13 <b>the same kinds of issues.</b></p> <p>14 Q. So, would you agree that if the</p> <p>15 pre-October 2016 sales were taken out, and the</p> <p>16 packaging price adjusted, that Mr. Weir's</p> <p>17 calculations would mathematically be correct</p> <p>18 according to his methodology?</p> <p>19 <b>A. According to his method, and</b></p> <p>20 <b>reasonable assumptions that it could not have</b></p> <p>21 <b>started before October of 2016, I think that would</b></p> <p>22 <b>be correct.</b></p> <p>23 <b>There is this issue that it is</b></p> <p>24 <b>uncertain when the contaminated tallow entered into</b></p> <p>25 <b>the actual product, which might change that date</b></p> <p style="text-align: right;">Page 40</p>	<p>1 <b>on that.</b></p> <p>2 Q. So, as you just mentioned a minute</p> <p>3 ago, and as stated in your report in Paragraph 18,</p> <p>4 you "understand from counsel that Champion did not</p> <p>5 begin purchasing the beef tallow from the supplier</p> <p>6 at issue until October of 2016".</p> <p>7 Did you provide any documentation</p> <p>8 about that issue or just asked to assume that that</p> <p>9 was the case?</p> <p>10 <b>A. Somewhere -- so, there was -- I</b></p> <p>11 <b>don't have any documentation of that. My research</b></p> <p>12 <b>team reached out, and said when -- which packages</b></p> <p>13 <b>and when would this -- this -- the allegedly</b></p> <p>14 <b>contaminated tallow product enter the -- you know,</b></p> <p>15 <b>the production stream, and this was the -- this is</b></p> <p>16 <b>what we were provided by counsel.</b></p> <p>17 Q. And then in Paragraph 19 you say;</p> <p>18 "even using October 2016 as a start date is overly</p> <p>19 inclusive, because I understand that the beef tallow</p> <p>20 that tested positive for Pentobarbital was delivered</p> <p>21 to Champion in March, 2018."</p> <p>22 What is the basis for that</p> <p>23 understanding?</p> <p>24 <b>A. So, the basis of that understanding</b></p> <p>25 <b>is to -- to the report. I believe there is a --</b></p> <p style="text-align: right;">Page 42</p>
<p>1 further, but we have no information about that.</p> <p>2 <b>So, this was the, I think, the</b></p> <p>3 <b>correction of things that are clearly at issue.</b></p> <p>4 <b>There could be other corrections that would be</b></p> <p>5 <b>appropriate, if -- if more information became</b></p> <p>6 <b>available.</b></p> <p>7 Q. And in Footnote 20 on page five,</p> <p>8 you say, "regardless of the errors and</p> <p>9 miscalculations, I feel that Mr. Weir provides no</p> <p>10 economic basis for his full refund illegal sales</p> <p>11 damages".</p> <p>12 What do you mean by that?</p> <p>13 <b>A. At least my understanding of his</b></p> <p>14 <b>argument is that this is a legal issue; that there</b></p> <p>15 <b>-- if they are illegal, then the sales are illegal,</b></p> <p>16 <b>and it's full refund.</b></p> <p>17 <b>There is not an economic analysis</b></p> <p>18 <b>that is supporting that. He is relying on the legal</b></p> <p>19 <b>argument that these were, indeed, illegal sales.</b></p> <p>20 Q. What sort of economic analysis</p> <p>21 would you find reasonable to support the full</p> <p>22 refund?</p> <p>23 <b>A. That's not something I considered.</b></p> <p>24 <b>So, I don't know. He -- it depends on the</b></p> <p>25 <b>circumstances, and I didn't do any further analysis</b></p> <p style="text-align: right;">Page 41</p>	<p>1 <b>it's cited in -- in 23. In personal discussion with</b></p> <p>2 <b>counsel on the dates from before, but the -- the</b></p> <p>3 <b>documents that support that date is the testing</b></p> <p>4 <b>document or the -- I would have to look at it</b></p> <p>5 <b>exactly to have it correct. There was a letter that</b></p> <p>6 <b>was sent that said, basically, it was tested for --</b></p> <p>7 <b>positive for Pentobarbital.</b></p> <p>8 Q. So, beyond that document cited in</p> <p>9 Footnote 23 under conversations with counsel, did</p> <p>10 you review any other materials that supported your</p> <p>11 opinions about the proper start date for the illegal</p> <p>12 sales damages?</p> <p>13 <b>A. No, that is -- that is -- and that</b></p> <p>14 <b>is why we used the October 2016 date as the</b></p> <p>15 <b>reference point. We don't have further information</b></p> <p>16 <b>that would refine it, but I do note that the actual</b></p> <p>17 <b>testing date it does postdate it.</b></p> <p>18 Q. If we turn to the Weaver report,</p> <p>19 which is Exhibit-2.</p> <p>20 Was your assignment in the Weaver</p> <p>21 case any different than your assignment in the</p> <p>22 Reitman case?</p> <p>23 <b>A. No. My understanding was that the</b></p> <p>24 <b>assignments were -- were the same.</b></p> <p>25 Q. Were you asked to do anything</p> <p style="text-align: right;">Page 43</p>

<p>1 further with respect to Dr. Krosnick's Pentobarbital 2 survey, and we've already discussed Reitman? 3 <b>A. No.</b> 4 Q. Did you review any new materials to 5 support your opinions in what was separate from what 6 you reviewed in Reitman? 7 <b>A. So, I -- yes. So, there's --</b> 8 <b>there's -- the vast majority of them were -- were</b> 9 <b>simply, essentially, updates of the materials from</b> 10 <b>before the reports -- the new -- the Complaint.</b> 11 <b>Things like that. So, those -- the -- the vast</b> 12 <b>majority of the changes were there.</b> 13 <b>There was also some of the</b> 14 <b>citations, what the sources were, are no longer</b> 15 <b>available. I mentioned this before, so those were</b> 16 <b>updated. So, that would bring new materials.</b> 17 <b>So, other than new case documents</b> 18 <b>that are specific to this, and that update, I think</b> 19 <b>that is the vast majority of it, and then the</b> 20 <b>materials we had from before.</b> 21 (Pause) 22 Q. So, with respect to your opinions 23 regarding Dr. Krosnick's first survey, the only 24 significant difference I see between your Reitman 25 report and your Weaver report is the opinion that</p> <p style="text-align: right;">Page 44</p>	<p>1 (Pause) 2 Q. So, in that first paragraph, 56, 3 you say, "the behavior of Respondents in 4 Dr. Krosnick's diminution value survey is 5 inconsistent with the fundamental economic principal 6 that, all else constant, consumers are less likely 7 to buy a product at a higher price than at a lower 8 price." 9 Do you see that sentence? 10 <b>A. Yes.</b> 11 Q. In Dr. Krosnick's diminution value 12 survey, was everything being held constant except 13 for price? 14 MR. KESSLER: Objection to form. 15 THE WITNESS: So, the -- so, the 16 design of his survey was that variation occurred in 17 the number of corrective statements in the price 18 that was random, and those were both randomized. 19 Everything else should have been a random draw. 20 - - - 21 CONTINUATION 22 BY MS. BORRELLI: 23 Q. So, those two things were changing, 24 the number of corrective statements and the price 25 between survey Respondents.</p> <p style="text-align: right;">Page 46</p>
<p>1 starts on Page 22, Paragraph 56. 2 <b>A. That is correct.</b> 3 Q. Okay. 4 Would you agree that your other 5 opinions regarding Dr. Krosnick's first survey are 6 identical to your first report? 7 <b>A. Yes, I think that's fair.</b> 8 Q. And the basis in reasoning are, 9 essentially, identical? 10 <b>A. Subject to the new materials, yes.</b> 11 Q. And, again, by "new materials," you 12 simply mean pricing that was not available -- 13 <b>A. And the --</b> 14 Q. -- online anymore? 15 <b>A. And the small modif -- you know, I</b> 16 <b>did review all the new reports, but they were,</b> 17 <b>essentially, the same as they were before, at least</b> 18 <b>with regard as to these issues.</b> 19 Q. Yeah. Okay. 20 So, starting on Page 22 you opine 21 that Dr. Krosnick's diminution of value survey data 22 are inconsistent with his estimates of percent 23 decrease in value. 24 Do you see that? 25 <b>A. Yes.</b></p> <p style="text-align: right;">Page 45</p>	<p>1 Is that right? 2 MR. KESSLER: Objection to form. 3 THE WITNESS: Those are the two 4 primary ways in which the randomization occurred, 5 yes. 6 - - - 7 CONTINUATION 8 BY MS. BORRELLI: 9 Q. So, this was not a situation where 10 everything was the same, but the price was the only 11 thing changing between Respondents; correct? 12 <b>A. I would disagree with that, because</b> 13 <b>the way -- you can do the analysis holding the</b> 14 <b>number of statements constant, which is what I was</b> 15 <b>referring to when I am making that statement.</b> 16 Q. And are you referring to your 17 analysis in Table 4? 18 <b>A. Table 4, and then Table 4 and</b> 19 <b>the -- let's just see. Where does it appear?</b> 20 (Pause) 21 <b>A. Yes. Table 4 in the associated</b> 22 <b>graphs that are Figure 1, and then the long list of</b> 23 <b>similar looking ones are all things on that I looked</b> 24 <b>at.</b> 25 <b>Either, you know, holding one</b></p> <p style="text-align: right;">Page 47</p>

<p>1 constant and looking at one across the other, and</p> <p>2 holding or looking at both simultaneously.</p> <p>3 (Pause)</p> <p>4 Q. You say, "the fact that Respondents</p> <p>5 of Dr. Krosnick's survey do not behave in a manner</p> <p>6 consistent with rational economic behaviors suggests</p> <p>7 that the survey is unreliable".</p> <p>8 You use the word "suggests" there.</p> <p>9 Is there anyway to verify that the</p> <p>10 survey is unreliable for this reason?</p> <p>11 A. I think this would be -- be</p> <p>12 evidence that that's the case. There is -- there is</p> <p>13 no absolute certainty in anything, but the -- the</p> <p>14 idea -- one of the standard tests you typically will</p> <p>15 do when analyzing economic data is to see if the</p> <p>16 Respondents behave in what would be consistent with</p> <p>17 the underlying theories you were using for the</p> <p>18 analysis, and, you know, price -- behavior of prices</p> <p>19 inconsistent with known economic behavior which</p> <p>20 would typically violate that.</p> <p>21 There are many reasons why that</p> <p>22 occurs, but what it says is that the survey is not</p> <p>23 able to replicate expected behavior, and, therefore,</p> <p>24 it could be unreliable.</p> <p>25 Q. In between May of 2019, when you</p> <p style="text-align: right;">Page 48</p>	<p>1 proposition?</p> <p>2 A. It's not something you would</p> <p>3 typically cite.</p> <p>4 I served as a Department Editor of</p> <p>5 the leading journal in our field for five years, and</p> <p>6 this is pretty typical of what you would see in a</p> <p>7 published academic work, as you tabulate the data</p> <p>8 first to see if it is consistent, and then -- then</p> <p>9 you move on to something more complicated.</p> <p>10 If it fails this test, then you</p> <p>11 probably need to revise your model or your data or</p> <p>12 both.</p> <p>13 Q. What journal is that?</p> <p>14 A. Management Science.</p> <p>15 Q. Is that an economic stream or</p> <p>16 business type journal?</p> <p>17 A. It's a little of both. It is a lot</p> <p>18 -- there are lot of economic analysis, yeah.</p> <p>19 Q. In Footnote 76 on page 22 you say</p> <p>20 that "this analysis applies equally in Reitman."</p> <p>21 When did you receive the data you</p> <p>22 needed to do the analysis in this section of your</p> <p>23 Weaver report?</p> <p>24 A. I have had this since the</p> <p>25 beginning, since this is based on Dr. Krosnick's</p> <p style="text-align: right;">Page 50</p>
<p>1 issued your initial report in Reitman and now, did</p> <p>2 you design or conduct any survey as part of your</p> <p>3 work in this case --</p> <p>4 A. No.</p> <p>5 Q. -- Weaver or Reitman?</p> <p>6 A. No, no additional. I did not</p> <p>7 design any surveys in this case.</p> <p>8 (Pause)</p> <p>9 Q. So, is this sort of test looking at</p> <p>10 the price behavior of Respondents, is that a</p> <p>11 standard statistical testing of reliance in the</p> <p>12 economic community?</p> <p>13 A. So, it is a standard practice, and</p> <p>14 in pretty much all scientific work that you tabulate</p> <p>15 data to see if it is consistent with your theory</p> <p>16 before you employ more complicated models, because,</p> <p>17 ultimately, when you start deploying models on data,</p> <p>18 you have to be able to distinguish the things that</p> <p>19 are actually being caused by the data from things</p> <p>20 that are being caused by assumptions in the models.</p> <p>21 So, this would be a standard thing</p> <p>22 that you would do at the beginning of any analysis</p> <p>23 to see if the survey data or the data source,</p> <p>24 whatever it is, is broadly consistent with --</p> <p>25 Q. Do you have a citation for that</p> <p style="text-align: right;">Page 49</p>	<p>1 original survey data production.</p> <p>2 Q. So, since approximately April of</p> <p>3 2019.</p> <p>4 Does that sound right?</p> <p>5 A. It's in that timeframe, yes.</p> <p>6 Q. So, you could have done this</p> <p>7 analysis in your initial Reitman report?</p> <p>8 A. Yes.</p> <p>9 Q. Were you asked to do this</p> <p>10 additional data analysis for Weaver?</p> <p>11 A. No.</p> <p>12 Q. It's just something you chose to</p> <p>13 do?</p> <p>14 A. It is something I chose to do that</p> <p>15 I had been thinking about ways of looking at this</p> <p>16 data, because the model, you know, as I have</p> <p>17 mentioned in my previous deposition and my previous</p> <p>18 report, the characteristics from the model I find</p> <p>19 strange and unusual. And so, I was thinking of ways</p> <p>20 where you could examine whether the underlying</p> <p>21 effects are true without having to rely on -- model.</p> <p>22 I've been thinking about it for a while, and it</p> <p>23 seems to be the best way to do it.</p> <p>24 MS. BORRELLI: Could we go off the</p> <p>25 record?</p> <p style="text-align: right;">Page 51</p>



1 VIDEO TECHNICIAN: The time is now  
2 10:02 a.m., and we are going off the record.  
3 - - -  
4 (Recess was taken at this time.)  
5 - - -  
6 VIDEO TECHNICIAN: Stand by.  
7 The time is now 10:11 a.m.  
8 This is the beginning of tape  
9 number two, and we are back on the record.  
10 - - -  
11 CONTINUATION  
12 BY MS. BORRELLI:  
13 Q. Okay.  
14 Dr. Hitt, we are talking about your  
15 opinions in the Weaver report, Exhibit-1, starting  
16 on page -- I'm sorry -- Paragraph 56.  
17 A. Okay.  
18 Q. I think we discussed this in your  
19 prior deposition, but can you remind me.  
20 How do you define statistical  
21 significance?  
22 A. Yeah. I -- I -- we -- we -- we did  
23 discuss this last time.  
24 It is -- it is, again, what  
25 statistical significance, it only has to be against

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1 a similar hypothesis.  
2 So, it's a typically stated reasons  
3 different, but you have to have the alternate to  
4 specify.  
5 Q. And did you do any tests of  
6 statistical significance of the data that your  
7 report in Table 4, as well as in Figure 1 in the  
8 attached Appendices?  
9 A. So, not explicit tests, but the  
10 charts have the confidence intervals, and so, if you  
11 wanted to do the comparison of whether or not, for  
12 example, moving across Figure 1 where those  
13 statements are different, you can look to see  
14 whether or not the confidence intervals overlap, and  
15 if they do, they won't be statistically different.  
16 Q. And you did not do that test of the  
17 data in Figure 1, and then the Appendices with the  
18 similar confidence intervals?  
19 A. The confidence intervals are all  
20 there. So, you can read the test off of the chart,  
21 but I didn't do a separate calculation of that  
22 statistic, no.  
23 Q. So, if I look at Figure 1, are you  
24 telling me if I can draw a line across all of those  
25 and the confidence intervals overlap, the results

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1 are statistically significant?  
2 A. So, I wouldn't say it that way.  
3 Again, it depends on the comparison  
4 you have. If you -- if you want to compare two of  
5 them, you can do it by looking whether or not the  
6 confidence intervals overlap.  
7 If you want to do more than two,  
8 there is more calculation you need to do.  
9 Q. I just want to make sure I  
10 understand.  
11 I'm looking at Figure 1, the title  
12 "Base Price" in the left.  
13 A. Yes.  
14 Q. So, let's say we look between two  
15 and three corrective statements. If I can draw a  
16 line there showing that those confidence intervals  
17 overlap.  
18 What does that tell you?  
19 A. That tells you that those aren't  
20 statistically different, but you can distinguish  
21 them from being the same.  
22 Q. Again, what does that -- so, what  
23 does that mean with respect to this data that you  
24 are showing here in Figure 1?  
25 A. So -- so -- so, what it says is, is

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1 that, for example, you can't distinguish the effect  
2 statistically between the number between two and  
3 three statements if you wanted to make that  
4 interpretation.  
5 The primary presentation of the  
6 graph is just showing the -- is it -- those are on  
7 there primarily to show how wide confidence  
8 intervals are on -- on the ends, and also to show  
9 the Plaintiffs' analytics are a little hashmark in  
10 the beginning shows that those don't show any  
11 particular pattern either.  
12 Q. You pointed out the two on the  
13 ends.  
14 What are the sample sizes that's  
15 contributing to those numbers?  
16 A. Off the top of my head, I don't  
17 know, because these are segmentations, but they are  
18 very small.  
19 Q. Can you get reliable information  
20 from such a small sample?  
21 A. Generally, no, and that's one of  
22 the -- well, you -- you get -- it's what it is. You  
23 get a very, very wide confidence interval, and that  
24 is one of the problems with the approach  
25 Dr. Krosnick took, at least in -- at least in the

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<p>1 <b>focus on seven and eight corrective statements,</b></p> <p>2 <b>because that relies -- he observed data at those</b></p> <p>3 <b>levels is actually a very small sample.</b></p> <p>4 <b>And especially -- that's especially</b></p> <p>5 <b>true for eight where the samples are extremely</b></p> <p>6 <b>small.</b></p> <p>7 (Pause)</p> <p>8 Q. So, your analysis in Table 4, that</p> <p>9 is based on the raw data from Dr. Krosnick's</p> <p>10 surveys.</p> <p>11 Is that right?</p> <p>12 <b>A. Yeah, that is correct. That is --</b></p> <p>13 <b>that is taking all the data that would have entered</b></p> <p>14 <b>into his regression, and not distinguishing between</b></p> <p>15 <b>the two packaging -- the randomization of the two</b></p> <p>16 <b>packages.</b></p> <p>17 <b>So, that would have been the full</b></p> <p>18 <b>sample that -- that was the basis of his regression.</b></p> <p>19 Q. And I'm not sure I asked this in --</p> <p>20 in your prior deposition, but remind me.</p> <p>21 Do you disagree with Dr. Krosnick's</p> <p>22 math in the regression he ran and/or do you disagree</p> <p>23 with the theory?</p> <p>24 <b>A. If I believe that he implemented</b></p> <p>25 <b>the method he described. The -- the -- what he did</b></p> <p style="text-align: right;">Page 56</p>	<p>1 regression of some sort to determine -- to figure</p> <p>2 out your data to whatever model you are looking at?</p> <p>3 MR. KESSLER: Objection to form.</p> <p>4 THE WITNESS: That's -- that's kind</p> <p>5 of a hard thing to -- to say generally appropriate,</p> <p>6 because saying you are using regression is kind of</p> <p>7 like saying you are using math.</p> <p>8 It is a huge family of techniques,</p> <p>9 and so, the -- the -- it is appropriate to use a</p> <p>10 model, and one of the ways in which you can estimate</p> <p>11 a model is by regression.</p> <p>12 And there is hundreds of different</p> <p>13 kinds of regression, too. So, that's extremely</p> <p>14 general.</p> <p>15 - - -</p> <p>16 CONTINUATION</p> <p>17 BY MS. BORRELLI:</p> <p>18 Q. Okay.</p> <p>19 So that it is standard practice to</p> <p>20 take your data and put it in some sort of a model of</p> <p>21 some sort to look at it.</p> <p>22 Is that a fair and general</p> <p>23 characterization?</p> <p>24 <b>A. There is -- there is a number of</b></p> <p>25 <b>different things you can do.</b></p> <p style="text-align: right;">Page 58</p>
<p>1 <b>is consistent with the way he described it.</b></p> <p>2 <b>So, from that perspective, yeah, he</b></p> <p>3 <b>did the math based on what he was doing. Whether</b></p> <p>4 <b>that is the right analysis he did, that is -- that</b></p> <p>5 <b>is a separate issue.</b></p> <p>6 (Pause)</p> <p>7 Q. And, in general, when you are</p> <p>8 looking at survey data, what's the purpose of</p> <p>9 running a regression as opposed to simply looking at</p> <p>10 the raw data?</p> <p>11 <b>A. It depends on what conclusion you</b></p> <p>12 <b>are trying to draw.</b></p> <p>13 Q. If you are trying to determine a</p> <p>14 diminution in value percent, what is the purpose in</p> <p>15 doing a regression versus looking at the raw data?</p> <p>16 <b>A. I think that is too general to</b></p> <p>17 <b>answer precisely.</b></p> <p>18 <b>You would use regression to</b></p> <p>19 <b>estimate some form of model. If you were trying to</b></p> <p>20 <b>estimate -- if that model was what you were going to</b></p> <p>21 <b>give you something that you needed, that's -- that's</b></p> <p>22 <b>one of the reasons you use regression, but there are</b></p> <p>23 <b>other techniques as well.</b></p> <p>24 Q. But you would agree it is common</p> <p>25 practice and generally appropriate to use the</p> <p style="text-align: right;">Page 57</p>	<p>1 <b>You can do tabulations.</b></p> <p>2 <b>You can do model estimation.</b></p> <p>3 <b>You can do machine learning, which</b></p> <p>4 <b>is slightly different way of modeling.</b></p> <p>5 <b>All sorts of things you can do, but</b></p> <p>6 <b>people do all sort of things and typically in that</b></p> <p>7 <b>combination.</b></p> <p>8 (Pause)</p> <p>9 Q. You may have said this already.</p> <p>10 I am sorry if I missed it.</p> <p>11 What does the -- what does a</p> <p>12 confidence interval tell you?</p> <p>13 <b>A. Without being, you know, overly</b></p> <p>14 <b>technical.</b></p> <p>15 <b>If you, basically, did the same</b></p> <p>16 <b>experiment again with a 95 percent -- the 95 percent</b></p> <p>17 <b>confidence levels, if you did the experiment again</b></p> <p>18 <b>from scratch with 95 percent probability, you'd get</b></p> <p>19 <b>an answer that lies within that confidence interval.</b></p> <p>20 <b>That is a sort of, I think, the</b></p> <p>21 <b>best casual way to express it.</b></p> <p>22 <b>You can express it in terms of</b></p> <p>23 <b>distribution as well, but that's basically the same</b></p> <p>24 <b>thing with more math.</b></p> <p>25 Q. And are there different ways to</p> <p style="text-align: right;">Page 59</p>

1 calculate confidence intervals?  
 2 **A. Yes, because they rely on certain**  
 3 **-- they rely on certain assumptions.**  
 4 Q. What methodology did you use to  
 5 calculate the confidence intervals in your Weaver  
 6 report?  
 7 **A. These are what are referred to as**  
 8 **Clopper-Pearson, and it is -- most of the methods**  
 9 **show similar results.**  
 10 **There is a -- with all confidence**  
 11 **intervals for buying and distribution, in**  
 12 **particular, you have issues regarding the time, the**  
 13 **fact that there's a discrete number of levels, and**  
 14 **so, we are -- what to do when you fall between them,**  
 15 **these different methods treat that value**  
 16 **differently, but these are Clopper-Pearson.**  
 17 Q. And did you --  
 18 **A. Oh, sorry.**  
 19 Q. Did you attempt to calculate  
 20 confidence intervals in using any other methodology?  
 21 **A. Yes. I believe we also computed**  
 22 **them using the Jeffreys Bayesian technique. They**  
 23 **basically look the same.**  
 24 **I don't think there is any**  
 25 **conclusion I would draw that would differ between**

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1 **those two methodologies. Those are the two more**  
 2 **common ones. There is probably six or eight more.**  
 3 Q. Did you produce the results of the  
 4 Jeffreys Bayesian confidence intervals that you ran?  
 5 **A. I -- they may be in the backup.**  
 6 **They don't appear -- the -- the ones on here, the**  
 7 **Clopper-Pearson ones.**  
 8 **The ones that appear in the report,**  
 9 **I do not recall if they related to the backup**  
 10 **documents or not.**  
 11 Q. Could we have those, please?  
 12 **A. I think it's one -- adding one line**  
 13 **to --**  
 14 Q. Okay.  
 15 **A. -- this data --**  
 16 Q. Okay.  
 17 **A. So, these are enough to produce.**  
 18 Q. Oh, all right.  
 19 (Pause)  
 20 Q. And, again, just -- you may have  
 21 said this, but just so I understand it.  
 22 For what purpose did you calculate  
 23 the confidence intervals in Figure 1 and in the  
 24 exhibits attached to Appendix 4 in your report --  
 25 **A. For --**

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1 Q. -- to show --  
 2 **A. For -- I'm sorry.**  
 3 **So, one is, I think this is -- is a**  
 4 **good visual presentation that the estimates,**  
 5 **particularly at the end of the sample, are very**  
 6 **precise. So, this is one way to look at it.**  
 7 **So -- so, that's one.**  
 8 **The second is to just illustrate**  
 9 **that the -- there is a fair amount of variation, and**  
 10 **that that variation typically is well within the**  
 11 **confidence bands between corrective statements.**  
 12 **So, it is very hard to conclude,**  
 13 **based on this tabulation of data that there is any**  
 14 **particular pattern, not just a systematic one of**  
 15 **declining -- declining in the number --**  
 16 Q. And did you do this analysis of the  
 17 data for each product that was used in the survey  
 18 separately as well?  
 19 **A. Yeah. There is -- there is three**  
 20 **dimensions upon which the randomization was done in**  
 21 **Krosnick's analysis, Dr. Krosnick's analysis.**  
 22 **One is the number of -- number of**  
 23 **-- prices were randomized, number of statements was**  
 24 **randomized, and then the two products were**  
 25 **randomized.**

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1 **So, there is every combination of**  
 2 **that. So, the extended number of charts in the back**  
 3 **are each product, each price level, number of**  
 4 **corrective statements.**  
 5 Q. When you break it down by each of  
 6 those variables, were the results that you received  
 7 consistent?  
 8 **A. You get the same basic**  
 9 **observations, which is that they seem to vary**  
 10 **considerably, and they typically are not distinct.**  
 11 **The contrast between the number of corrective**  
 12 **statements are not typically outside of each other's**  
 13 **confidence intervals, and that is more of a general**  
 14 **-- general observation that, you know, these charts**  
 15 **basically look very similar.**  
 16 Q. Okay.  
 17 **A. There are some variation across**  
 18 **them, but they look generally similar.**  
 19 Q. Look at the paragraph on page 24.  
 20 **A. (Witness complies.)**  
 21 Q. Towards the end of that paragraph  
 22 you say -- there is a sentence that starts, "in  
 23 fact, there is no pattern at all apparent in the  
 24 data".  
 25 Do you see that sentence?

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<p>1       <b>A. Yes.</b></p> <p>2       Q. And you say, "especially taking</p> <p>3 into account the statistical uncertainty in the</p> <p>4 percentages."</p> <p>5       Do you have a -- is there a journal</p> <p>6 or textbook you can cite in support of that</p> <p>7 proposition?</p> <p>8       <b>A. It's basic standard technique to --</b></p> <p>9 <b>to clock data, and when you do not see any visible</b></p> <p>10 <b>pattern then, you know, I will show you what the</b></p> <p>11 <b>data looks like. You can see that there is not a</b></p> <p>12 <b>visual pattern there.</b></p> <p>13       <b>Most data analytic textbooks</b></p> <p>14 <b>encourage you to plot your data ahead of time just</b></p> <p>15 <b>to see what the relationship are.</b></p> <p>16       <b>That is pretty standard, and that's</b></p> <p>17 <b>something that is almost always required when at</b></p> <p>18 <b>least the places I published, both in the UK and in</b></p> <p>19 <b>management. It is a pretty common thing to do.</b></p> <p>20       Q. In Footnote 80 on that page you say</p> <p>21 that, "Dr. Krosnick created indices based on control</p> <p>22 variables to include in his regressions. In theory</p> <p>23 such controls should not be necessary for his</p> <p>24 analysis or for the analyses in Table 4 and Figure 1</p> <p>25 here."</p> <p style="text-align: right;">Page 64</p>	<p>1 <b>tests you can do, but that wasn't one of the issues</b></p> <p>2 <b>that I was especially concerned about.</b></p> <p>3       (Pause)</p> <p>4       Q. Turn to page 29 of Exhibit-2,</p> <p>5 Paragraph 71.</p> <p>6       Based on my comparison, I believe</p> <p>7 that this paragraph was not included in your initial</p> <p>8 Reitman report, Exhibit-3.</p> <p>9       Does that sound right to you?</p> <p>10       <b>A. That's correct.</b></p> <p>11       Q. And what -- what was the reasoning</p> <p>12 for including this paragraph here in Weaver and not</p> <p>13 in Reitman?</p> <p>14       <b>A. So, I'm always thinking about ways</b></p> <p>15 <b>to try to present the -- the same ideas in a</b></p> <p>16 <b>simpler, more straightforward way that is more</b></p> <p>17 <b>understandable.</b></p> <p>18       <b>And so, given some -- given some</b></p> <p>19 <b>more thought, this seemed to be potentially helpful</b></p> <p>20 <b>in explaining why I believe what I believe about</b></p> <p>21 <b>supply and demand.</b></p> <p>22       Q. And how do you define the "but-for"</p> <p>23 world as you use that term in this paragraph?</p> <p>24       <b>A. So -- so, the but-for world as --</b></p> <p>25 <b>as I would understand it in this context is that</b></p> <p style="text-align: right;">Page 66</p>
<p>1       What is the basis for that</p> <p>2 statement?</p> <p>3       <b>A. Basic statistical theory.</b></p> <p>4       <b>If you -- if you randomize</b></p> <p>5 <b>properly, then it should also be randomized over the</b></p> <p>6 <b>control periods, and so you shouldn't have to</b></p> <p>7 <b>have -- in the end the contrast you draw in the data</b></p> <p>8 <b>should not depend on those control variables.</b></p> <p>9       <b>To the extent your randomization is</b></p> <p>10 <b>imperfect, they might, but if you're truly -- if</b></p> <p>11 <b>it's truly randomized, you shouldn't need the</b></p> <p>12 <b>control variables to draw the contrast.</b></p> <p>13       (Pause)</p> <p>14       Q. Do you have any opinions about</p> <p>15 whether Dr. Krosnick's sample was properly</p> <p>16 randomized?</p> <p>17       <b>A. So, the only -- I did do additional</b></p> <p>18 <b>examination as to whether or not across these</b></p> <p>19 <b>various groups the levels of control variables are</b></p> <p>20 <b>randomized consistently, and they seem to be.</b></p> <p>21       <b>So, as -- as -- as far as I could</b></p> <p>22 <b>tell, there doesn't seem to be any issue, at least</b></p> <p>23 <b>with these that -- that the -- the randomization was</b></p> <p>24 <b>a problem.</b></p> <p>25       <b>I didn't do the -- there are more</b></p> <p style="text-align: right;">Page 65</p>	<p>1 <b>Champion would sell products with different labeling</b></p> <p>2 <b>on it, and, you know, accepting the -- the -- the --</b></p> <p>3 <b>if I accepted the Plaintiffs labeling, it would be</b></p> <p>4 <b>with the corrective statements on it in some way.</b></p> <p>5 <b>That's the natural "but-for" world that would be</b></p> <p>6 <b>just accepting, you know, the Plaintiff's arguments.</b></p> <p>7       Q. So, the only thing that is</p> <p>8 different in the "but-for" world is that Plaintiff's</p> <p>9 corrective statements appear on the packaging on</p> <p>10 Champion products?</p> <p>11       <b>A. Well, that would be the -- that</b></p> <p>12 <b>would be the -- the -- the difference in the</b></p> <p>13 <b>product, but then you have -- then have all the</b></p> <p>14 <b>reactions that would cause, including the changes</b></p> <p>15 <b>in, you know, whatever changes in equilibrium;</b></p> <p>16 <b>price. Changes in supplier behavior. Champion.</b></p> <p>17 <b>Changes in competitive behavior.</b></p> <p>18       <b>That -- that would occur in the</b></p> <p>19 <b>"but-for" world as a result of this kind of change,</b></p> <p>20 <b>and there is some discussion, too, in the report as</b></p> <p>21 <b>to what those kinds of changes are.</b></p> <p>22       <b>But certainly, you change -- change</b></p> <p>23 <b>one characteristic in a world where firms are</b></p> <p>24 <b>optimizing, you can get a reaction, and those</b></p> <p>25 <b>reactions would also cause a change in prices,</b></p> <p style="text-align: right;">Page 67</p>

<p>1 quantities and competitive behavior, and potentially</p> <p>2 other things.</p> <p>3 Q. Okay.</p> <p>4 So, in your view all the changes</p> <p>5 are the "but-for" world?</p> <p>6 A. Yes.</p> <p>7 Q. A whole list of things I think you</p> <p>8 said.</p> <p>9 A. That's not necessarily intended to</p> <p>10 be exhaustive, but you make one change, and then you</p> <p>11 have to make another, and the reaction to it could</p> <p>12 be a change, and that would cause many changes</p> <p>13 simultaneously.</p> <p>14 Q. And since you issued your report in</p> <p>15 Reitman in May, have you done any analysis of what</p> <p>16 the supply side would look like in your definition</p> <p>17 of the "but-for" world in this case?</p> <p>18 A. No. I have not done any additional</p> <p>19 work on -- on the supply side, no.</p> <p>20 (Pause)</p> <p>21 Q. Look at Paragraph 85 on Page 34 of</p> <p>22 Exhibit-2.</p> <p>23 Is this a paragraph in which you</p> <p>24 changed the prices and citations because the -- the</p> <p>25 ones you cited prior were not available anymore.</p> <p style="text-align: right;">Page 68</p>	<p>1 errors in Mr. Weir's calculations the same as in</p> <p>2 Reitman, although applied to different numbers?</p> <p>3 A. Generally, yes. It's the same kind</p> <p>4 of issues, because the data used for this is</p> <p>5 slightly different because Mr. Weir uses different</p> <p>6 prices for Wisconsin sales relative to the</p> <p>7 California sales.</p> <p>8 There is different matching issues,</p> <p>9 but, essentially, it's an issue of -- issue of</p> <p>10 matching products to prices, and so, that is,</p> <p>11 essentially, identical.</p> <p>12 (Pause)</p> <p>13 Q. Your opinion that Mr. Weir's</p> <p>14 estimation method overstates dollar sales of its</p> <p>15 accused products.</p> <p>16 Is that the same opinion you would</p> <p>17 -- you had offered in your first Reitman report?</p> <p>18 A. Which one are you referring to</p> <p>19 specifically?</p> <p>20 Q. It's paragraphs one and two on 103.</p> <p>21 (Pause)</p> <p>22 A. Oh, yeah.</p> <p>23 These are, essentially, the same.</p> <p>24 Q. I think you said you haven't</p> <p>25 received any additional retail sales data since your</p> <p style="text-align: right;">Page 70</p>
<p>1 A. That's exactly right.</p> <p>2 Q. Okay.</p> <p>3 So, this different pricing</p> <p>4 information doesn't change your opinions at all?</p> <p>5 A. No. It is -- it was an observation</p> <p>6 that there is -- there -- there do exist different</p> <p>7 prices, and that's still true.</p> <p>8 There is no change there.</p> <p>9 Q. Okay.</p> <p>10 So, starting on Page 39, Paragraph</p> <p>11 97, are your opinions related to -- is this opinion</p> <p>12 related to Dr. Krosnick's Pentobarbital survey, is</p> <p>13 this the same as the package in Reitman reported in</p> <p>14 Exhibit-1?</p> <p>15 A. Yes. This should be -- yes, it is</p> <p>16 the same opinion.</p> <p>17 Q. Okay.</p> <p>18 And the basis is the same -- the</p> <p>19 same we have already discussed today?</p> <p>20 A. Yeah.</p> <p>21 My answers to questions about this</p> <p>22 would be the same as the questions about the other</p> <p>23 one.</p> <p>24 Q. Okay.</p> <p>25 And are your opinions regarding</p> <p style="text-align: right;">Page 69</p>	<p>1 deposition in May of this year.</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 Then starting on page 42 there's a</p> <p>5 discussion of the errors you identified in</p> <p>6 Mr. Weir's calculations.</p> <p>7 Like in Reitman, were these errors</p> <p>8 related to the time period of sales included, and</p> <p>9 then the packaging prices?</p> <p>10 A. Yeah. I think that's fair.</p> <p>11 Q. So, you would agree that if</p> <p>12 Mr. Weir corrected the errors that you identified</p> <p>13 here, at least according to his methodology, the</p> <p>14 math would be correct?</p> <p>15 A. Yes, he would be -- he would be</p> <p>16 consistent -- consistent with his own approach, yes.</p> <p>17 (Pause)</p> <p>18 A. As far as we know.</p> <p>19 (Pause)</p> <p>20 Q. With respect to Mr. Weir's</p> <p>21 Wisconsin damage calculations, did you identify any</p> <p>22 calculation errors that may have increased the</p> <p>23 damages under his methodology?</p> <p>24 MR. KESSLER: Object to form.</p> <p>25 THE WITNESS: Yeah, in this</p> <p style="text-align: right;">Page 71</p>



<p>1 particular --</p> <p>2 MS. BORRELLI: Diminution in sales.</p> <p>3 THE WITNESS: Yes. Yes. So -- so</p> <p>4 --</p> <p>5 MS. BORRELLI: Diminution of value.</p> <p>6 THE WITNESS: So -- so -- so, there</p> <p>7 were -- there is one situation. This one is in --</p> <p>8 in Table 5, the second footnote where he -- I think</p> <p>9 there is -- there is some cases where he misapplies</p> <p>10 a 13 pound package with a 13 kilogram package price,</p> <p>11 and that would actually cause it to increase.</p> <p>12 - - -</p> <p>13 CONTINUATION</p> <p>14 BY MS. BORRELLI:</p> <p>15 Q. And is that increase included in</p> <p>16 the calculations you identify in Table 5?</p> <p>17 A. Yes.</p> <p>18 Q. Can you show me where?</p> <p>19 A. I'd have to look up these products.</p> <p>20 To see it actually in action, you</p> <p>21 would have to go to the sheet itself and --</p> <p>22 Q. Okay.</p> <p>23 A. -- see the corrections, but it</p> <p>24 would be for -- let's see, the product and payer --</p> <p>25 (Pause)</p> <p style="text-align: right;">Page 72</p>	<p>1 Q. And they were -- you offer an</p> <p>2 opinion about errors Mr. Weir had in calculating the</p> <p>3 illegal sale damages.</p> <p>4 So, like in your second Reitman</p> <p>5 report, Exhibit-1, are these errors limited to this</p> <p>6 time period, and then package pricing issues?</p> <p>7 A. Yes. There is going to be -- there</p> <p>8 is going to be a different -- both -- both of those</p> <p>9 factors are different here, but the -- the errors</p> <p>10 are in the same spirit.</p> <p>11 Q. And how do they differ?</p> <p>12 A. Just the time period is different,</p> <p>13 and the products effected are different. So, there</p> <p>14 is different -- if the products that were -- that</p> <p>15 were effected in both the -- the price issues could</p> <p>16 -- would extend across the two -- but it is</p> <p>17 different time periods, and some of the illegal</p> <p>18 sales damages products are not -- are only some of</p> <p>19 those.</p> <p>20 Well -- sorry.</p> <p>21 Those are a subset of all of the</p> <p>22 products that are considered in the other one, and</p> <p>23 there was products for which there is corrections in</p> <p>24 the broader population that don't apply here,</p> <p>25 because those products aren't included.</p> <p style="text-align: right;">Page 74</p>
<p>1 A. Let's see, if the price -- apple.</p> <p>2 Yeah, you can't see it directly</p> <p>3 because all -- this has all the changes all at</p> <p>4 once --</p> <p>5 Q. Huh-huh.</p> <p>6 A. -- but if you go to the actual</p> <p>7 backup, you can actually see the prices rise in</p> <p>8 that.</p> <p>9 So, for example, a can of lamb and</p> <p>10 an apple decreases partially. That's a time period</p> <p>11 issue, but also there's an offsetting effect.</p> <p>12 But in the backup -- in the backup</p> <p>13 to the calculation there is a spreadsheet tab called</p> <p>14 "Calculation" that has -- you can look specifically</p> <p>15 which prices were changed, and you can see when they</p> <p>16 increased.</p> <p>17 Q. So, you didn't intentionally</p> <p>18 exclude directions that would have increased</p> <p>19 damages?</p> <p>20 A. No. The once -- within the method</p> <p>21 used, mostly following the research team, and I give</p> <p>22 the framework, but the idea was to systematically go</p> <p>23 through and look for mismatches of products to</p> <p>24 prices and correct those errors consistently</p> <p>25 throughout. And so, those should be in there.</p> <p style="text-align: right;">Page 73</p>	<p>1 Q. Right.</p> <p>2 In your various understandings</p> <p>3 about the proper time period, are the basis for</p> <p>4 those understandings the same as we have already</p> <p>5 discussed with respect to your Reitman report?</p> <p>6 A. Yes. Same basis. Same approach.</p> <p>7 Q. And Mr. Weir made the calculations</p> <p>8 to his -- if Mr. Weir made the corrections to the</p> <p>9 calculations that you identify are necessary with</p> <p>10 respect to the illegal sales damages, would you</p> <p>11 agree that the damages number would be correct --</p> <p>12 MR. KESSLER: Object.</p> <p>13 MS. BORRELLI: -- to his</p> <p>14 methodology?</p> <p>15 MR. KESSLER: Object to the form.</p> <p>16 THE WITNESS: The -- the -- the</p> <p>17 figure is -- the figure would be correct based on</p> <p>18 his methodology.</p> <p>19 I would not say this is the -- this</p> <p>20 is necessarily a correct figure for damages, but,</p> <p>21 yes, the math would be correct based on his --</p> <p>22 MS. BORRELLI: Okay.</p> <p>23 Can we just take a few minutes, and</p> <p>24 I will be about done, just to make sure.</p> <p>25 MR. KESSLER: Yeah.</p> <p style="text-align: right;">Page 75</p>

1 VIDEO TECHNICIAN: The time is now  
2 10:44 a.m., and we are going off the record.  
3 - - -  
4 (Recess was taken at this time.)  
5 - - -  
6 VIDEO TECHNICIAN: Stand by.  
7 The time is now 10:48 a.m.  
8 We are back on the record.  
9 MS. BORRELLI: I don't think I have  
10 anything else.  
11 So, we are done.  
12 Thank you for your time this  
13 morning.  
14 MR. KESSLER: I don't have any  
15 questions.  
16 So, that means your deposition is  
17 concluded.  
18 THE WITNESS: Thank you.  
19 VIDEO TECHNICIAN: This is the end  
20 of today's deposition of Dr. Lorin Hitt.  
21 The time is now 10:49 a.m., and we  
22 are going off the record.  
23 - - - -  
24 (Witness excused.)  
25 - - - -

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1 - - -  
2 (Deposition concluded at  
3 10:49 a.m.)  
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I, Debra G. Johnson-Spallone, certify that the foregoing is a true and accurate transcription of the notes taken by me on the date set forth.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel in connection with the action, nor financially interested in the action.

\_\_\_\_\_  
DEBRA G. JOHNSON-SPALLONE, CCR, RPR  
License NJ #30X100118200

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After so doing, please sign and date the errata sheet. You are signing subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate as submitted and may be used in court.

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E R R A T A      S H E E T

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C E R T I F I C A T E

I, the undersigned witness, do hereby certify that I have read the foregoing deposition, and that to the best of my knowledge, recollection and belief, said deposition is true and correct with the exception of the corrections listed:

Signature

Date

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